



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5201-99

3 November 1999

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 30 March 1973 at age 19. The record shows that during the period 23 February 1975 to 9 September 1976 you received nonjudicial punishment on three occasions and were convicted by a special court-martial. Your offenses were unlawful entry, receiving stolen property, use of marijuana, use of provoking words, disobedience and disrespect.

On 2 December 1976 you began a period of unauthorized absence which lasted until you were apprehended on 26 January 1977 by civil authorities on four counts of armed robbery. However, the charges were dropped and you were released from confinement. The record shows that you were an unauthorized absentee from 1 May 1977, when you failed to report to the Marine Corps after your release by civil authorities. You remained absent until you surrendered on 3 April 1978.

Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the foregoing periods of unauthorized absence totaling about 486 days, and a charge of attempted larceny which had been pending since 26 August 1976. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 25 April 1978 and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You were discharged on 3 May 1978.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your limited education and your need for medical care by the Department of Veterans Affairs. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for serious offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval

record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director